

## **LOBBYING and NON-PROFIT ORGANIZATIONS**

Discussion of this topic often results in two extreme actions – some people warn that if your organization does any lobbying you risk losing your tax-exempt status with the IRS. Other people don't exercise enough caution and do put their organization at risk with the IRS because they don't understand the restrictions on lobbying that pertain to their non-profit.

So what is the answer? Can we or can't we lobby? The answer lies somewhere in the middle. Sara E. Melendez, president of Independent Sector suggests “....lobbying by nonprofit, charitable organizations is legal, as long as they follow certain rules.”

CHARITY LOBBYING IN THE PUBLIC INTEREST, a project of Independent Sector, suggests that a non-profit organization needs to be aware of the requirements established by two laws passed by Congress. These laws are the 1976 Lobby Law (PL 94-455-Sec. 1307) and the Lobbying Disclosure Act of 1995.

PUBLIC INTEREST suggests that it might be in the best interest of the non-profit organization to “make the 501 (h) election” by completing IRS Form 5768 (Election to Make Expenditures to Influence Legislation). This form allows your organization to state that it “elects” to adhere to the provisions of the 1976 lobbying law (PL 94-455-Sec. 1307) passed by Congress. By doing so, your organization agrees to stay within specified spending restrictions on lobbying activities (20% of your first \$500,000 in annual expenditures, 15% of your next \$500,000 of expenditures, 10% of expenditures between \$1 million and \$1.5 million, and 5% of expenditures between \$1.5 million and \$17 million). Maximum total expenditures for lobbying activities by the non-profit under these rules would be limited to \$1 million. The IRS has stated that completion of Form 5768 doesn't flag the non-profit for an automatic audit. Those non-profits who chose not to “elect” to come under the 1976 lobbying law guidelines are subject to the ambiguous IRS “substantial” test. This “test” leaves uncertain which activities of charities constitute lobbying and how much lobbying is permitted. Because the IRS hasn't provided a clear definition of “substantial” levels of lobbying activities, the non-profit which hasn't completed IRS Form 5768 can never be certain when it is straying beyond the IRS legal lobbying limits.

If your non-profit has at least one employee who is considered a “lobbyist”, that is an employee who spends at least 20 percent of their time on “lobbying” activities, the non-profit will need to closely review the provisions of the Lobbying Disclosure Act of 1995. Information on lobbying can be found on the web at the Charity Lobbying in the Public Interest website: <http://www.independentsector.org/clpi/>

For more information on the restrictions placed on lobbying, contact: Charity Lobbying in the Public Interest, 2040 S. Street, NW, Washington, D.C. 20009; Phone: (202) 387-5048; Fax: (202) 387-5149; web site: <http://www.IndependentSector.org/>

As suggested above, non-profit organizations can participate in a limited amount of “lobbying” activities. An article by Jon S. Vernick, JD, MPH entitled “Lobbying and Advocacy for the Public's Health: What are the Limits for Nonprofit Organizations?” appears in the September 1999 issue of the American Journal of Public Health, Vol. 89:9 pgs. 1425 – 1429. In this article, Dr. Vernick describes the two basic forms of lobbying - direct and grassroots.

Direct lobbying is any attempt to influence legislation through communication with legislators, staff persons or any other government official who participates in the formulation of legislation, where the communication refers to specific legislation and reflects a view on the legislation.

Grassroots lobbying is an attempt to influence any legislation through an attempt to influence the opinions of the general public or any segment thereof. The effort must refer to specific legislation, reflect a view on the legislation and include a call to action to be considered grassroots lobbying.

Non-profit organizations are strictly prohibited from engaging in electioneering. Electioneering is considered an attempt to directly influence an election, such as the endorsement or public opposing the election of a specific candidate. Any involvement in electioneering places the non-profit tax-exempt status at risk.

In the May-June 1985 issue of NonProfit World Report, Rhonda G. Migdail authored an article titled, "Lobbying and Political Activities – What Every Nonprofit Should Know." Ms. Migdail describes five types of activities that would be considered "electioneering."

1. publication or distribution of written or printed statements on behalf of, or in opposition to a candidate
2. attempts to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office;
3. contributions to any political campaign;
4. voter education activities in which the organization presents a bias on certain issues;
5. payment of salaries or expenses of campaign workers..

Considerations related to Permissible Activities of 501 (c) (3) organizations during a political campaign are discussed at a website located at: <http://rtk.net/las/lobperm.html/>

This webpage discusses the limitations within which a not for profit organization can be involved with; candidates' statements, questionnaires, voting records, public forums, and membership lists. Cheryl K. Smith, Legal Services Director of the Oregon Rehabilitation Association, has placed an article called "Lobbying and NonProfit Status" at a website located at: <http://www.nonprofit-info.org/misc/lobby.txt> This article has a good description of the record keeping requirements to document your lobbying related expenses.

The Aspen Institute, an international nonprofit educational institution dedicated to enhancing the quality of leadership through informed dialogue, has created an interesting web-site at: <http://www.aspeninst.org/policy/index.html>

This website details a comparison of twelve Non Profit organizations. Three of the organizations are 501 (c) (3), while the other nine organizations are either 501 (c) (4) or 501 (c) (6) organizations. The 501 (c) (4) and (c) (6) organizations have no restrictions on their lobbying activities, in contrast to the lobbying restrictions for 501(c) (3) organizations we have been describing above.

If your organization pays attention to the lobbying parameters within which the Internal Revenue Service will allow you to operate, your organization won't need to worry about jeopardizing your tax-exempt status.



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